IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/07/2004

CORAM

THE HONOURABLE MR.JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.A.No.598 of 2001

Raghunathan .. Appellant

-Vs-

State by
Inspector of Police
Saidapet Police Station
Chennai
Crime No.659/98 .. Respondent

This criminal appeal is preferred under Sec.374 of the Code of Criminal Procedure against the judgment dated 6.2.2001 made in S.C.No.398 of 2000 on the file of the VI Additional Sessions Judge, Chennai.

!For Appellant : Mr.T.Munirathina Naidu

^For Respondent : Mr.V.Arul
Government Advocate
(Criminal Side)

:JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM, J.)
The sole accused in a case of murder, who was found guilty as per the charge under Sec.302 I.P.C. and awarded life imprisonment by the VI Additional Sessions Judge, Chennai, has brought forth this appeal.

2. Short facts necessary for the disposal of this appeal are as follows:
(a) The appellant/accused married the deceased Santhi just four months prior to the occurrence and was living at Saidapet, Madras. His family members were also residing therein. He was often demanding money from his wife, and she, in turn, used to make visits to her parental home, make demand and get money from P.W.1 Ravanammal, her mother. On 17.3.1998, P.W.1 went to the house of her daughter, and at that time the deceased informed her that her husband was making a demand of Rs.20,000/-. P.W.1 replied that she could not meet the demand and returned home. On 19.3.1998, P.W.5 Rajini, the brother of

the accused, came to the house of P.W.1 and informed her that the accused and the deceased were quarrelling each other, and his father asked him to go to the house of P.W.1 to get her. Accordingly, P.W.1 went to the house of the appellant, and she found her daughter with burn injuries on the body, and she was lying on the ground. P.W.2 Srinivasan and P.W.3 Muthammal also accompanied P.W.1. At about 9.15 P.M., the deceased was taken to Kilpauk Medical College Hospital, where P.W.9 Dr. Thirunavukkarasu, who was on duty, examined her. The deceased gave a statement to P.W.9 stating that she sustained injuries due to the burst of a stove. The injuries found on the body of the deceased that time are narrated in Ex.P5 accident register copy.

(b) P.W.12 Selvanathan, Sub Inspector of Police, who was in-charge of Saidapet Police Station, on receipt of an intimation from Kilpauk Medical College Hospital, proceeded to the Hospital and recorded the statement of the deceased, which is marked as Ex.P8. At about 1.45 A.M. on 20.3.1998, he registered a case on the strength of the said statement given by the deceased, in Crime No.659 of 1998 under Sec.307 of I.P.C. The printed First Information Report Ex.P9 was despatched to the Court. A requisition Ex.P10 was sent to the Metropolitan Magistrate for recording the dying declaration. On receipt of the requisition, the VII Metropolitan Magistrate, Madras, went to Kilpauk Medical College Hospital, and P.W.10 Dr.Nirmala, who was on duty, certified that the mental condition of the deceased was all right to give a declaration, the portion of which is marked as Ex.P6. The dying declaration was recorded by the VII Metropolitan Magistrate following the formalities, and the same is marked as Ex.P14. The Sub Inspector of Police proceeded to the scene of occurrence, made an observation, prepared Ex.P11 observation mahazar and drew Ex.P12 rough sketch. M.O.1 a bottle, was also recovered under a mahazar. On 20.3.1998, the accused was arrested by P.W.12, and he was sent to Court for remand.

(c) On 27.3.1998, the deceased Sumathi, who was under treatment, died at 7.10 A.M. An intimation Ex.P7 in that regard was received by P.W.15 Balusamy, Inspector of Police, and he altered the case into one under Sec.302 of I.P.C. The express report Ex.P16 was sent to the Court. He took up the investigation. He proceeded to the hospital and made an inquest on the dead body in the presence of witnesses and panchayatdars. He prepared Ex.P17 inquest report. A communication was sent to the Hospital for conduct of autopsy on the dead body.

(d) P.W.14 Dr.Murugesan, Tutor of Forensic Medicine in Kilpauk Medical College, Madras, conducted autopsy and found the following injuries:

Infected I to II degree burns injuries on the entire face, neck both upper limbs fully, both lower limbs fully, Front of upper half of the abdomen, back of the chest and abdomen fully and both gluteal regions. The skins were peeled off in all the above areas and exposing the underlying inflamed and infected subcutaneous tissues and these wounds were covered with foul smelling pugular greenish yellow coloured pus materials and wound septic seen.

The Doctor has issued Ex.P15 postmortem certificate and has opined that the deceased would appear to have died of septic complications of burns injuries.

(e) On completion of the investigation, P.W.15 Inspector of Police filed the final report.

3. In order to prove the charge levelled against the appellant/ accused, the prosecution marched 15 witnesses and relied on 17 exhibits and 1 material object. On completion of the evidence of the prosecution side, the

accused was questioned under Sec.313 of the Code of Criminal Procedure as to the incriminating circumstances found in the evidence. He flatly denied the same. No defence witnesses were examined. The trial Court, on consideration of the submissions made on either side and scrutiny of the materials, found him guilty as per the charge and awarded the life imprisonment, which is under challenge before this Court.

4. The learned Counsel appearing for the appellant made the following submissions:

The prosecution before the lower Court had no direct evidence to establish its case. Even according to P.W.1, when she went to the house of the deceased, she was found with burn injuries. P.W.1 has not stated that any statement was made by the deceased to her stating that it was the accused, who committed the crime. The earliest document was the statement given by the deceased to P.W.9 Doctor, wherein it has been found that it was an accidental fire, and it has been clearly mentioned therein that it was on account of the burst of a stove. The observation mahazar prepared by the Investigating Officer at the time of inspection of the scene of occurrence did not reveal that there was any stove available at the place of occurrence. The next thing which was relied on by the prosecution for obtaining conviction against the appellant, was the statement given by the deceased to P.W.12, the Sub Inspector of Police, which is marked as Ex.P8, and the dying declaration recorded by the Metropolitan Magistrate from the deceased at the hospital, which is marked as Ex.P14. A perusal of both these documents would clearly indicate that it was an accidental fire. Nowhere the deceased has implicated the accused to the crime in question. From both these statements, it would be clear that the deceased was actually sitting by the side of an oven, and at that time, a quarrel arose between the accused and the deceased, and the accused poured kerosene on her from M.O.1 bottle. There is no mention as to the act of the accused. It is to be noted that the fire from the oven has spread over, and she got into the clutches of fire. A perusal of both the statements would further indicate that when she raised cry, it was the accused, who rushed over and poured water on her to put down the fire. In such circumstances, it cannot be stated that the accused has committed the crime in question. It is pertinent to point out that while the statements are so, originally the case should not have been registered under Sec.307 I.P.C., and the appellant had nothing to do with the cause of death or the death of the deceased. Even without proper appreciation of the evidence available, the lower Court has found him guilty, and hence, the judgment of the lower Court has got to be set aside.

5. This Court heard the learned Government Advocate (Criminal Side) on those contentions.

6. After careful consideration of the submissions made and analysis of the materials available, this Court is of the considered opinion that the trial Court has neither marshalled the evidence available nor considered it to find the appellant/accused guilty of the charge.

7. It is a case, where fortunately for the defence, the statement of the deceased itself was available at three stages. The earliest one was made when the deceased was taken to the hospital and examined by P.W.9 Doctor, to whom she has categorically stated that it was an accidental fire, and the injuries were caused due to the burst of a stove. As rightly brought to the notice of the Court by the learned Counsel for the appellant, the observation

mahazar did not mention anything about the stove; but, it would mention the firewood oven. The second statement was one, which was recorded by P.W.12 the Sub Inspector of Police from the deceased at the hospital, where she was taking treatment, and the said statement is marked as Ex.P8. A reading of Ex.P8 would clearly indicate that a quarrel arose when the deceased was sitting by the side of an oven, and it was the accused, who poured kerosene on her; but, it was the fire from the oven that spread over, and due to that, she had the burn injuries. Hence, it would be clear that there is nothing to indicate that the injuries were caused out of any act committed by the accused.

8. The next stage was the dying declaration given by the deceased to the Metropolitan Magistrate, and the same was recorded as found under Ex.P14. A perusal of the same would also clearly indicate that it was the accused, who poured kerosene; but he did not lit fire, and it was the fire from the oven that spread over, and she sustained burn injuries. On the face of these three statements made by her, there is nothing to indicate that the accused at any point of time lit the fire on her; but, he only poured kerosene on her, and it would not amount to an offence.

9. In the instant case, it has to be pointed out that originally a case should have been registered as an accidental fire; but, it has been converted into one under Sec.307 I.P.C. It can be well inferred that the original First Information Report, which came into existence at the earliest, should have been torn, and a new one for an offence under Sec.307 I.P.C. should have been brought into existence, probably the police officials concerned would have thought that the marriage has taken place just four months prior to the occurrence. The statement of the deceased at all stages would be clearly indicative of the fact that it was only an accidental fire and not by the burst of the stove, which ultimately caused the death of the deceased by the act of the accused. The Court below without proper perception of the evidence, has found him guilty, and hence, the error committed by the lower Court has got to be set right only by upsetting the judgment of the Court below.

10. In the result, this criminal appeal is allowed, and the conviction and sentence passed by the lower Court are set aside. The appellant/accused is acquitted of the charge levelled against him and is directed to be set at liberty forthwith, unless his presence is required in any other case.

Index: yes
Internet: yes
To:
1. The VI Additional Sessions Judge, Chennai.
2. The VI Additional Sessions Judge, Chennai,
Through The Principal Sessions Judge, Chennai.
3. The District Collector, Chennai.
4. The D.G.P., Chennai.
5. The Public Prosecutor, Madras.
6. The Superintendent, Central Prison, Chennai.
7. The Inspector of Police, Saidapet Police Station, Chennai

nsv/